

Court of Appeal had permitted the decision of the court below to stand.

Lord Justice Phillimore also observed on the anomaly that the discovery of the will would, admittedly, not have invalidated the dealing of the administrator if there had been no executors of the will appointed, or all of them had predeceased the testator or had pronounced probate: (see, for instance, *Boxall v. Boxall*, 51 L.T. Rep. 771; 27 Ch. Div. 220). This anomaly is avoided by the decision of the Court of Appeal, and purchasers for value without notice of a will or another will, as the case may be, can henceforth deal with the legal personal representatives of a deceased without the misgivings which they have experienced since the judgment in *Hewson v. Shelley* was given last July.

There still remains the question whether the specific devisee cannot recover the proceeds of sale from the coheirresses who have all this time been enjoying what in reality belong to another. As Mrs. Hewson had a life interest in all her husband's property, and she died only in September, 1911, the devisee could not recover interest from any earlier date, but it is difficult to see how he can be barred when his right to possession accrued only two and a half years ago. In *Jervis v. Wolfestan* (30 L.T. Rep. 452, L. Rep. 18 Eq. 18), where an executor was held entitled to recover from the residuary legatees what had been paid to them in disregard of certain liabilities of the testator's estate which had subsequently ripened into a debt, Sir George Jessel said: "That has always been the law, and I think there is no unusual hardship in it. On the other hand, it has been thought to be a hardship that a man may not spend the income of what he has been paid, and the doctrine is now established, that if an executor recovers back assets he cannot recover any of the income, but he must take only the capital."

In *Re West* (101 L.T. Rep. 375; (1909), 2 Ch. 180), however, where another codicil was subsequently discovered, in which certain shares given by the earlier instruments to A. were bequeathed to B., it was held that B. was entitled to recover not